

# Exhibit 2

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND  
CLAUDIA ENGELHORN, et al,

Plaintiff,

vs.

Case Number:  
C-24-CV-24-002631

ERIK BOLOG, et al.,

Defendant.

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REPORTER'S OFFICIAL TRANSCRIPT OF PROCEEDINGS  
(Motion's Hearing)

Baltimore, Maryland

Monday, January 27, 2025

BEFORE:

THE HONORABLE JEFFREY GELLER, Associate Judge

APPEARANCES:

For the Plaintiff:

PATRICK GARDNER, ESQUIRE

For the Defendants, Whiteford, Taylor, and  
Preston:

JOHN J. CONNOLLY, ESQUIRE  
WILLIAM J. MURPHY, ESQUIRE

For the Defendant Erik Bolog individually and  
as Trustee for the Jareb Irrevocable Trust  
Agreement; Science Park Associates, LLC; and  
Darnestown Road, Inc. et al.:

DOUGLAS GANSLER, ESQUIRE  
J.B. HOWARD, ESQUIRE  
ZACK SCHRIEBER, ESQUIRE

\* Remote Electronic Proceedings Digitally Recorded \*

Transcribed by:  
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Baltimore, Maryland 21202

1 Plaintiff.

2 But that's not what we're technically doing  
3 here. We're asserting that there's, again, this -- this  
4 agreement is not, apparently, not a written one. So to  
5 the extent that there's -- attorney-client agreements can  
6 be created in common law as well, and implied in fact as  
7 well, and an express written contract.

8 And then I would just note, yes, in closing,  
9 the Maryland and position of the Maryland Ethics opinion  
10 -- Bar Ethics Committee remains that, since 1990, that  
11 attorney -- attorney-client arbitration agreements are  
12 improper unless the client is informed of the -- has --  
13 is independently represented with respect to making that  
14 agreement.

15 And then -- just checking the last of my notes  
16 here.

17 Yeah, unless the Court has any other questions.

18 THE COURT: No. I don't have any questions.

19 Do counsel for Mr. Bolog want to chime in on  
20 the arbitration piece?

21 MR. GANSLER: Yes, Your Honor, thank you. And  
22 good morning.

23 I just want, for the record, this is Douglas  
24 Gansler, counsel for Mr. Bolog and the entities, joined  
25 by my colleagues, J.B. Howard and Zack Schreiber on the

1 Zoom call.

2 Your Honor, the question -- I suppose the  
3 answer to that is, Mr. Bolog, nor any of his entities,  
4 ever signed any arbitration agreement of any type. So  
5 were this Court to send the case to arbitration, we would  
6 not be involved.

7 With that said, moving on to the discussion we  
8 just heard, we would agree with Mr. Connolly that this is  
9 an easy decision for Your Honor. This case should not go  
10 to arbitration. And the reason why that is, is because  
11 the sole arbitration clause that occurred in this case is  
12 in fact the retainer letter regarding -- and it says,  
13 "regarding all claims regarding the estate of Curt  
14 Engelhorn." I'm looking at the February 20th, 2020  
15 version. They're basically all the same in regard to  
16 arbitration and the scope of the sole, what they call  
17 retainer letter -- we call it engagement letter, same  
18 thing -- is that, "You have chosen to engage Whiteford,  
19 Taylor, and Preston to provide legal services in  
20 connection with your potential claims against the estate  
21 of Curt Engelhorn and potential other persons who may  
22 come to our attention through the investigation into this  
23 matter relating to your forced heir rights or other  
24 rights you may have concerning the trust established by  
25 him."

1 By the time the gift was made or any of the  
2 transactions in this case occurred, that case was long  
3 over, right for Taylor got its \$4 million, Ms. Englehorn  
4 got her \$130 million as a result of the settlement of  
5 that case, of the Swiss litigation case. So -- and there  
6 exists no other retainer letters regarding any other of  
7 these matters, so that's it. I mean, it's that simple.

8 It's clearly -- look, had there been a  
9 disagreement or an issue that had come up during the  
10 course of the Swiss litigation, then of course this  
11 exegesis regarding Colorado versus Maryland law and the  
12 Rules of Professional Conduct and all those things would  
13 come into play. But here, there is no arbitration clause  
14 relevant to any of the issues that are brought in the  
15 complaint by the Plaintiff. So we have no we have no dog  
16 in the fight, but it seems clear to me that there is no  
17 fight.

18 THE COURT: All right. Thank you.

19 Back to Mr. Connelly.

20 MR. CONNOLLY: Your Honor, I was on mute. I  
21 apologize.

22 With respect to what Mr. Gansler just said, I'm  
23 not sure I fully understand it, but it's contrary to what  
24 he wrote. If he's saying that the arbitration clause  
25 does not apply to the current dispute, he's totally

1 I do think this is an easy case. There's an  
2 arbitration agreement with a broad arbitration provision  
3 that covers all counts of the complaint, and the Court  
4 should order arbitration, and other issues can be  
5 resolved by arbitrators, as they are every day in cases  
6 all across the country by arbitrators, in accordance with  
7 the public policy of all 50 states in the U.S.  
8 government. So I would ask that the Court grant the  
9 petition to compel.

10 THE COURT: All right. Thank you.

11 So taking this a piece at a --

12 MR. GANSLER: I'm sorry. This is Doug Gansler.  
13 Can I just respond in 30 seconds?

14 THE COURT: Go ahead.

15 MR. GANSLER: Thank you.

16 I just responded to Mr. Connolly's discussion  
17 that about the language of the arbitration agreement,  
18 which does say, "Any claim or dispute arising out of or  
19 relating to this agreement, our services under it, or our  
20 relationship with you will be resolved by final and  
21 binding arbitration," blah, blah, blah.

22 If the suggestion is correct that that somehow  
23 anything outside of the Swiss litigation is subject to  
24 arbitration, despite not having any arbitration  
25 agreements anywhere else on any of the matters, then that

1 would -- which seems pretty obvious that it does not.  
2 That would render the language before, the "or anything  
3 to do with our relationship with you," that -- they  
4 wouldn't put that in there. It would say -- where it  
5 says, "any claim or dispute arising out of or relating to  
6 this agreement," it would -- there would be no need for  
7 that or "our services under it," would be -- would be  
8 superfluous, and it would -- it wouldn't make sense as an  
9 English construct.

10 And I guess what it -- what they seem to be  
11 saying -- what Mr. Connelly's argument seems to be saying  
12 is that by signing this one retainer agreement that  
13 exists between Whiteford Taylor, Mr. Bolog, and Ms.  
14 Engelhorn, that's the sole one that exists. That by  
15 saying that any our relationship with you will be  
16 resolved, any subsequent, any case, any relationship, any  
17 -- any interaction between Ms. Engelhorn and the law firm  
18 is going to be resolved by arbitration has to be their  
19 argument, and obviously that makes no sense. So I would  
20 just add those to our original thoughts.

21 THE COURT: Mr. Connolly, since it's your  
22 motion, I'll go back to you for the last word.

23 MR. CONNOLLY: Well, I mean, again, I'd  
24 encourage you to read what Mr. Gansler actually wrote in  
25 his paper, which is completely contrary to this. But

1           There was a statement that this existence of an  
2           oral agreement between Bolog and the Plaintiff was  
3           something that I had raised for the first time here.  
4           It's something that they put in their answers or  
5           responses to requests for admission, which we provided,  
6           and it's Exhibit B to our opposition. That Whiteford,  
7           Taylor, and Preston put in their responses to our request  
8           for admissions.

9           THE COURT: Okay. Mr. Connolly, anything else  
10          since it's is your motion? You get the last word.

11          MR. CONNOLLY: No, Your Honor. It is true that  
12          we -- that we included references to that agreement, but  
13          it's not true that that undoes the arbitration agreement  
14          in any particular.

15          THE COURT: Okay. All right. So having  
16          considered the filings of the parties, as well as the  
17          argument presented thus far this morning, I'm going to  
18          give you a decision on the arbitration motion.

19          So obviously, the parties have disagreed as to  
20          what state's law applies to the analysis. This Court  
21          finds that Maryland law applies. First, it's not  
22          entirely clear to me that Ms. Engelhorn signed the  
23          contract in Colorado. Even if she did, as the Supreme  
24          Court of Maryland held in *Laboratory Corporation of*  
25          *America versus Hood*, 395 Md. 606, 621, quote, "The lex



1 loci contractus principle is not inflexible, and that it  
2 does not apply to a contract provision which is against  
3 public policy," unquote.

4 In *Bethlehem Steel versus G.C. Zarnas and*  
5 *Company*, 304 Md. 183 at 188, the court noted that, quote,  
6 "Merely because Maryland law is dissimilar to the law of  
7 another jurisdiction does not render the latter contrary  
8 to Maryland public policy, and that for another state's  
9 law to be unenforceable, there must be a strong public  
10 policy against enforcement in Maryland."

11 The Court does find that there's a strong  
12 public policy in favor of applying Maryland law in this  
13 case. That policy would exist within the Rules of  
14 Professional Conduct that apply to attorneys practicing  
15 in this State. I think Plaintiff's counsel had cited the  
16 *Post vs. Bregman* case, 349 Md. 142, that that the Rules  
17 of Professional Conduct are, in fact, a statement of  
18 public policy that have the force of law.

19 So with the Maryland Rules of Professional  
20 Conduct standing as a backdrop of what public policy is  
21 in the State as it pertains to attorney conduct, as it's  
22 been noted, the Rules 19-301.8(h)(1) clearly prohibits  
23 agreements limiting an attorney's prospective liability  
24 to a client without the client being represented  
25 independently or being advised in writing of the

1 desirability to seek an independent counsel, which was  
2 not done in this matter, the Court so finds.

3 Furthermore, even if I was to apply Colorado  
4 law, as Whiteford, Taylor, and Preston argues, I would  
5 still find the provision to be unenforceable. And if I  
6 found that the law of the District of Columbia applied,  
7 I'd reach the same result.

8 This is because the Court finds that Plaintiff  
9 Engelhorn was not fully informed about the scope and  
10 effect of the agreement. So for these reasons, the  
11 Court's going to deny Whiteford, Taylor, Preston's Motion  
12 to Compel Arbitration.

13 So let's turn to the Motions to Dismiss on  
14 substantive grounds. And what I'd like to do is I'll  
15 hear from both defense counsel, let Mr. Connolly respond  
16 to all of it, and then turn back to defense counsel, go  
17 in that direction.

18 So any references to who goes first?

19 MR. MURPHY: Your Honor, I'm William Murphy,  
20 also representing Whiteford. I was going to argue the  
21 Motion to Dismiss that Whiteford has filed.

22 THE COURT: Okay, well, I'll hear from you  
23 first, and then I'll turn it over to the Bolog  
24 Defendants.

25 MR. MURPHY: Okay. Thank you, Your Honor.